

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation  
of the Family Day Care License  
of Shelly Armstrong

FINDINGS OF FACT,  
CONCLUSIONS,  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Allan W. Klein at the Office of Administrative Hearings in Minneapolis at 9:30 a.m. on July 21, 2000.

Appearing on behalf of the Minnesota Department of Human Services and the Ramsey County Community Human Services Department was David Turner, Certified Student Attorney, Ramsey County Attorney's Office, 50 West Kellogg Boulevard, Suite 560, St. Paul, Minnesota 55102-1556. There was no appearance by the Licensee, Shelly Armstrong, or any person on her behalf. The record closed on July 21, 2000, at the end of the hearing.

**NOTICE**

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected by the Report, to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Michael O'Keefe, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

**STATEMENT OF ISSUE**

Whether the revocation of Shelly Armstrong's family day care license should be affirmed, or reversed?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On July 13, 1999, the Ramsey County Community Human Services Department (hereinafter "County Agency") recommended to the Commissioner of Human Services that the C-1 group family day care license of Shelly Armstrong be

revoked. The recommendation was contained in an eight-page letter setting forth incidents which had led to ten correction orders involving 36 rule violations.<sup>[1]</sup>

2. On August 31, 1999, the Commissioner of Human Services revoked Armstrong's license in a seven-page letter asserting a number of statute and rule violations. The letter closed with a notice of Armstrong's right to appeal the decision.<sup>[2]</sup>

3. On September 15, 1999, the Department issued a Notice of and Order for Hearing, setting a hearing in this matter for November 18, 1999 before Allan W. Klein, Administrative Law Judge. That hearing was postponed to allow the parties to resolve the matter without litigation, and ultimately, another administrative law judge recommended that the Commissioner dismiss the appeal, with prejudice. That occurred on February 3, 2000. On March 2, 2000, Armstrong wrote to the Commissioner and indicated that she desired to proceed with a hearing because she wanted to remain in the day care field. Due to a procedural error in compiling the record for the Commissioner, the Commissioner was unable to issue a final decision in the matter, and ultimately remanded it back to the Administrative Law Judge for additional proceedings.

4. On May 30, 2000, a new Notice of and Order for Hearing was issued, setting the hearing for July 21 in Minneapolis before the undersigned Administrative Law Judge. The Notice provided, in pertinent part, as follows:

A notice of appearance must be filed with the Administrative Law Judge within 20 days of service of the Notice of and Order for Hearing if a party intends to appear at the hearing.

Failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing and Exhibit A being taken as true. This means that the action being appealed will be upheld.

5. This new Notice of Hearing was mailed to Shelly Armstrong on May 30 by certified mail. She was left a notice of the parcel on May 31, and a second notice on June 6. When she failed to claim the parcel, it was returned to the Agency on June 15.<sup>[3]</sup>

6. On June 14, 2000, the County Attorney's Office sent a process server from Metro Legal Services to Armstrong's address in an attempt to personally serve her with a copy of the Notice of Hearing. The person answering the door refused to state her name and refused to accept the parcel.<sup>[4]</sup> The process server handed it to her nonetheless. The parcel was later found in the street, and was returned to the County Attorney's Office.<sup>[5]</sup>

7. On June 20, 2000, the County Attorney's Office sent a parcel by first-class mail. Some person (presumably Armstrong) crossed out Armstrong's name and address, and wrote the words "refused" and "return to sender" on the parcel. It was returned to the Ramsey County Attorney's Office on June 28.

8. On June 21, 2000, the Ramsey County Attorney's Office served a Notice of Motion and Motion, along with supporting Memorandum and Proposed Order, upon Armstrong by first-class mail. This document was not returned to the County Attorney's Office. The documents did refer to a hearing date of July 21.

9. On June 23, the Administrative Law Judge received a handwritten letter, dated June 22, from Armstrong. The letter essentially states "I resigned last year, so this hearing should be dismissed." And "I just want this matter dropped." And, "I just want this matter dropped, since I was lied to and have no way to defend myself. That itself isn't fair, especially in light of her (social worker) lying to me. I guess the hearing date was 7/21/2000. Please dismiss without prejudice. This matter has been mishandled. I haven't done child care in over a year."

10. Upon receipt of this letter, the Administrative Law Judge faxed it to the County Attorney's Office, with a request for a response. On June 26, the County Attorney responded, indicating it would attempt to have Ms. Armstrong sign a Stipulation and Order to Dismiss with Prejudice, but that past experience suggested that it might not be successful. The County stated that it desired to go forward with its motion and the hearing on July 21.

11. On June 26, the Administrative Law Judge wrote to Ms. Armstrong indicating that the hearing would go forward on July 21, and that although she did not have to attend the hearing, if she did not attend, a default order would be issued and a recommendation would be made that her license be revoked. This letter was not returned to the Administrative Law Judge as being undelivered.

12. On July 14, the Administrative Law Judge served a Prehearing Order on Armstrong by first-class mail. It was not returned as undelivered.

13. On July 19, Armstrong faxed a lengthy, three-page letter to the Administrative Law Judge, indicating that she was aware of the hearing date of July 21, but that she would not attend the hearing. Most of the letter was a complaint about how she had been treated by her licensing worker. Attached to the letter was a note from Dr. Ali Ebrahimi, dated June 28, 2000, indicating that Armstrong has been a patient of his, and that her use of various medications may have caused her to have difficulty with cognition and with reading. The note closes with the following:

I think that the legal proceeding would be physically and mentally taxing for this individual. A reprieve from the legal proceedings might be in her best medical interest.

14. The Administrative Law Judge faxed a copy of Armstrong's letter and the doctor's note to the County Attorney's Office for a response. On July 20, 2000, the County Attorney's Office responded, indicating that they desired to proceed with the hearing, arguing that Ms. Armstrong's three-page letter of July 19 demonstrated that her cognitive abilities were strong enough.

15. On July 20, the Administrative Law Judge directed a Staff Attorney in his office to call Ms. Armstrong and indicate that the hearing would go forward the next day. The telephone was answered by a message machine, and the Staff Attorney left that message. Later in the afternoon, the Administrative Law Judge again attempted to contact Ms. Armstrong, and again the telephone was answered by a message machine. The Administrative Law Judge left a message indicating that Armstrong did not have to appear at the hearing, but if she did not attend, he would recommend that her license be revoked.

16. Ms. Armstrong did not attend the hearing or make any further contact with the Administrative Law Judge.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. § 14.57-14.62 and Minn. Stat. § 245 A.05-08.

2. The Notice of Hearing was proper, and all substantive and procedural requirements of Law and Rule have been fulfilled.

3. Under Minn. Rule Part 1400.6000, the Administrative Law Judge is authorized to dispose of contested cases where a party defaults. A default occurs where a party has failed to appear at the hearing. Ms. Armstrong is in default in this matter.

4. Taking the allegations in the Notice of and Order for Hearing as true, the Agency has established by a preponderance of the evidence that Ms. Armstrong has failed to comply with statutes and rules governing day care operations. The particular statutes and rules are those listed in Exhibit A of the Notice of and Order for Hearing.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the revocation of the family day care license of Shelly Armstrong be AFFIRMED.

Dated this 10th day of August 2000.

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ALLAN W. KLEIN  
Administrative Law Judge

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- [\[1\]](#) Ex. 3.
  - [\[2\]](#) Ex. 13.
  - [\[3\]](#) Ex. 14.
  - [\[4\]](#) Ex. 16.
  - [\[5\]](#) Ex. 15.